APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 8-8-2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP 2004-1478-TMV W63-W64

C. PROJECT LOCATION AND BACKGROUND INFORMATION: USH 41 Oconto to Peshtigo – Highway Expansion
State: **Wisconsin** County/parish/borough: **Oconto** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **44.9562878399322**° **N**, Long. **-87.8717076299491** ° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: **Unnamed Tributary to Green Bay**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Green Bay**
Name of watershed or Hydrologic Unit Code (HUC): **Oconto. Wisconsin.**
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: **8-8-2007**
☒ Field Determination. Date(s): **8-1-2007**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: **400** linear feet: **4** width (ft) and/or acres.
      Wetlands: **0.8** acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Not established at this time.**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **210 square miles**
Drainage area: **2800 acres**
Average annual rainfall: **28** inches
Average annual snowfall: **45** inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☒ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **5-10** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **1-2** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .
Tributary stream order, if known: **Unnamed tributary flows into Green Bay.**.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 4 feet
Average depth: 1-2 feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

☒ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☒ Vegetation. Type/% cover: Reed Canary grass 70%	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Due to current drought conditions, reed canary grass has migrated into the tributary bed, which is keeping the otherwise erosive banks stable..

Presence of run/riffle/pool complexes. Explain: The stream bed is currently primarily dry due to severe drought, but areas devoid of vegetation show exposed tree roots and woody debris is lodged across the tributary in some areas giving the structure needed to form some micro pool areas. The land is very flat so there would not be any riffles.

Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **6-10**
Describe flow regime: The area is very flat and the RPW is primarily surrounded by wetlands which slow the flow.
Other information on duration and volume: Flow is generally present from snow melt in March through the end of June. The volume of flow is variable and depends on the amount of snowfall received that season and amount of water contributed by spring rains. July through September are typically dry seasons and the flow either dries up entirely or remains nearly stagnant due to the very slight gradient in the area, thick vegetation, and wetland soil's capacity to sponge up the moisture from the tributary. Staining on the concrete box culvert under USH 41 indicates ordinary high flows to be approximately 14-inches from bed to surface.

Surface flow is: **Confined.** Characteristics: Flow is generally confined to bed and bank except during snow melt and heavy rain events when surface flows extend landward to temporarily inundate surrounding wetlands.

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☒ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☒ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☒ scour
☒ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☒ other (list): Water lines on culvert.	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The stream bed was moist, and in some areas especially in and near the culvert, there was some inundation (2-4 inches) at the time of the site visit. The stream bed appeared generally clean and sufficiently buffered by vegetation to create conditions favorable for medium to high water quality..

Identify specific pollutants, if known: There may be some nitrogen and phosphorus as a result of runnoff from nearby farms, but none was apparent at the time of site visit..

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian corridor. Characteristics (type, average width): .

☒ Wetland fringe. Characteristics: The area abutting the tributary is, shrub-carr, fresh (wet) meadow, and reed canary grass monotype.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☒ Fish/spawn areas. Explain findings: It is likely that northern pike use this stream for spawning. Many tributaries to Green Bay like this one, are typically used for this purpose.

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size:Total of 2 wetlands is approx. 0.8 acre.

Wetland type. Explain:W63 is Shrub-carr of 0.43-acre; W64 is fresh (wet) meadow of 0.38-acre.

Wetland quality. Explain: The wetlands provide high value wildlife habitat for species including songbirds, ruffed grouse, woodcock, and small mammals. In addition, ring-necked pheasant, and white-tailed deer use the area for a travel corridor.. The wetlands are also important for nutrient cycling, and stormwater retention. Their value for these functions is medium. Floristic diversity is generally medium in the wetland areas, except in open canopy areas immediately adjacent to the streambed where reed canary grass has invaded in a monotypic fashion due in large part to current lack of flow because of high to extreme drought conditions. Wetland quality is based on observations during a site visit conducted on August 1, 2007, professional knowledge of the area, and summary data from a MnRam assessment conducted by WDOT at W64.

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: .

Surface flow is**: Discrete**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.

Project waters are **1-2** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **5 - 10-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The wetlands appear generally healthy and clean. The main potential pollutant concerns are based on surrounding land use and appear to be from oil and salt runnoff from the adjacent highway and also agricultural pesticides, herbicides, and nutrients from surrounding farms.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

☒ Riparian buffer. Characteristics (type, average width):Fresh (wet) meadow and shrub-carr wetlands.

☒ Vegetation type/percent cover. Explain:Fresh(wet) meadow, 40%; shrubs, 40%; reed canary grass 20%.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Wildlife habitat is characterized as moderate value in these wetlands because they contain diverse physical structure of an herbaceous and shrub layer in close proximity to each other. A diversity of animals are

able to and do use the wetlands as a result. The wetlands were rated as high value in WDOT's MnRam assessment. This is due to the wetland's functioning to protect important northern pike spawning habitat in the adjacent tributary.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**
   All wetland(s) being considered in the cumulative analysis: **4**
   Approximately (9200 +) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Wetland 1	Y	320 acres		
Wetland 2	Y	240		
Wetland 3	Y	640		
Wetland 4	Y	8000 +		

Summarize overall biological, chemical and physical functions being performed: Two main functions are evident in these wetlands. First, the wetlands in the relevant reach serve cumulatively to provide an important wildlife corridor for wildlife travel, shelter, feeding, breeding and rearing along the tributary area and Green Bay. The surrounding areas that are dry enough to farm are being used primarily for agriculture and rural residential, leaving few other areas with natural vegetation for wildlife habitat. Therefore, the wetlands are of moderate to high value for providing both biological and physical functions of wildlife habitat. Secondly, hydrology in the area, including the relevant reach, is not only affected by spring snow melt and spring rains, but also by ground water levels which are highly influenced by the water level in Green Bay, the TNW. Average lake water levels in Green Bay have been approximately 2 feet below normal levels for many years, causing a loss of historical shoreland wetlands and their functions. Wetlands in the relevant reach are therefore, very important to maintain because now there are fewer wetlands available to provide water quality protection to Green Bay. Wetlands in the relevant reach perform chemical functions of nutrient cycling to help keep pollutants such as phosphorus from entering Green Bay. In addition, the subject tributary in the relevant reach and other tributaries in Wetland 4 are important spawning habitat for Northern Pike who live primarily in Green Bay and Lake Michigan, but need the tributaries for spawning activities. Therefore, this tributary with seasonal flow and its adjacent wetlands, including W63-W64, provides a significant nexus to Green Bay.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Although a significant nexus determination is not required, the following documentation is offered as matter of policy because the RPW is seasonal: The wetlands directly abut the RPW. Both the subject wetlands (W63, W64), outer wetlands (Wetlands 1, 2, 3, 4) and the subject RPW have functional values that support physical, biological, and chemical characteristics of Green Bay. These have been addressed above in III.B.1, 2, and 3. Specifically, as mentioned above, Northern Pike who primarily live in Green Bay require tributaries like the subject tributary for spawning. The subject wetlands 63-64, which abut the subject

tributary, are important in providing water quality functions for Green Bay, the TNW. Continued low Lake (Michigan) levels have contributed to a significant loss in historical shoreland wetlands. This fact places even greater importance on maintaining the remaining wetlands in order to contribute to adequate protection of water quality in Green Bay and Navigable waters beyond the Bay. The wetlands in the relevant reach function together to provide flood storage, reduce sedimentation into Green Bay, nutrient cycling, important wildlife and fish habitat associated with Green Bay and its shoreland area. Therefore, the unnamed tributary and its abutting wetlands are considered to be a significant nexus to Green Bay.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
- ☐ TNWs: linear feet width (ft), Or, acres.
- ☐ Wetlands adjacent to TNWs: acres.

2. RPWs that flow directly or indirectly into TNWs.
- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
- ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: **On August 1, 2007, a site visit resulted in observations of, under severe drought conditions, the tributary bed was saturated, and in some areas especially in and near the culvert, there was some inundation (2-4 inches) at the time of the site visit**. **An approximate 3-feet wide by 4 feet high concrete box culvert under existing USH 41 between wetlands 63 and 64 showed water stains at various levels, most prominently at approximately 14 inches. In addition, the tributary bed was void of vegetation. The seasonal flow characteristics of this tributary is typical of many tributaries to Green Bay in the area, and is further explained in Section III.B**.

  Provide estimates for jurisdictional waters in the review area (check all that apply):
  - ☒ Tributary waters: **400** linear feet **4** width (ft).
  - ☐ Other non-wetland waters: acres.
    Identify type(s) of waters: .

3. Non-RPWs[8] that flow directly or indirectly into TNWs.
- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  Identify type(s) of waters: **.**

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **.**

- ☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The two subject wetlands (approximately 0.8-acre) were identified as separate wetlands so their location, impact area and vegetative type could be accounted for separately for project purposes. However, they are both part of the same wetland complex (identified as Wetland 2 in relevant reach support ing documents) which includes the unnamed RPW and directly abuts it. There are no berms, or natural or artificial hinderences to surface or hydrologic connection between the wetlands and the RPW. This is based on observations made during a site visit on August 1, 2007** .

Provide acreage estimates for jurisdictional wetlands in the review area: **1** acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.
- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

[8]See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.[9]

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

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[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **USGS Oconto East (WI) Quadrangle 1:50,000**.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Oconto County Soil Survey**.
- ☐ National wetlands inventory map(s). Cite name: .
- ☒ State/Local wetland inventory map(s): **Wisconsin Wetland Inventory**.
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **NRCS Summer 2005**.
  or ☒ Other (Name & Date): **Site photos, August 1, 2007**.
- ☐ Previous determination(s). File no. and date of response letter: .
- ☒ Applicable/supporting case law: **Rapanos**.
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): **local precipitation data - NOWData - NOAA Online data, WDOT 11-17-04 MnRam Functional Assessment summary .**

B. ADDITIONAL COMMENTS TO SUPPORT JD: There are 2 wetlands identified by WDOT to be impacted at the location reviewed for this particular jurisdictional determination. A total of approximately 0.8-acre would be impacted at this JD location. These wetlands were considered together because they are abutting each other, but identified seperately due to a vegetation type change, and are part of the same larger wetland complex. The wetlands identified in this determination as W63 and W64 directly abut an unnamed tributary, which is an RPW with seasonal flow for reasons explained in Section III B.1 and III.D.2 above. The unnamed tributary flows into Green Bay, a TNW.